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Conflict of Laws -- Contribution of Joint Tort-Feasors Residents of Different States

and constables to accept bail bond,[25] it makes no mention of police officers, and there is no provisions for taking cash substitutes. Since embezzlement is a statutory offense[26] requiring that a definite legal relation exist between the embezzler and the embezzled,[27] the finding that the accused was a trustee for the depositor rather than for the municipality furnished a legally sufficient rationale for the majority opinion. The dissent reasoned that the absence of any specific inhibition in the Code against the acceptance of a substitute for bail bond, together with the long period of ratification of the defendant's acts gave such color of authority to the chief of police as would warrant finding the necessary relation to sustain the conviction for embezzlement.[28]

It is submitted that such strict adherence to the letter of the statute prevented the merited punishment of a public official for an intended criminal act which, under the agency rationale of the minority, was punishable. There being no judicial remedy left under the decision, it appears highly desirable for the Georgia General Assembly to correct this anomalous situation by appropriate legislation.

CONFLICT OF LAWS—CONTRIBUTION OF JOINT TORT-FEASORS RESIDENTS OF DIFFERENT STATES

Plaintiff, an Ohio corporation, and defendant, a Pennsylvania resident, as joint tort-feasors caused an accident in Ohio. Plaintiff paid an Ohio judgment to an injured third party and sought indemnity or contribution from the defendant in a Pennsylvania action. The Court of Common Pleas granted full indemnity. *Held*, that indemnity cannot be granted where plaintiff is a joint tort-feasor and that application of the Ohio law, which is contra to Pennsylvania statute, precludes relief by way of contribution. *Builders Supply Co. v. McCabe*, 366 Pa. 322, 77 A.2d 368 (1951).

The law with respect to indemnity and contribution is basically clear. While indemnity is a right to full reimbursement[1] which springs from a contract,[2] contribution is an apportionment of damages,[3] a right arising out

25. GA. CODE ANN. § 27-902 (1933).
26. GA. CODE ANN. § 26-2801 (1933); Hughes v. United States, 4 F.2d 686 (8th Cir. 1925); Fitch v. State, 135 Fla. 361, 185 So. 435 (1938).
27. People v. Hayes, 365 Ill. 318, 6 N.E.2d 645 (1937).
28. Scarboro v. State, 62 S.E.2d 168, 169 (Ga. 1950) (dissenting opinion by Atkinson, Presiding Justice).

1. Fidelity & Cas. Ins. Co. of N. Y. v. Sears, Roebuck & Co., 124 Conn. 227, 199 Atl. 93 (1938); Mo. Dist. Tel. Co. v. Southwestern Bell Tel. Co., 338 Mo. 692, 93 S.W.2d 19 (1935); Lasher v. Montgomery Ward & Co., 253 App. Div. 564, 3 N. Y. S. 2d 32 (1938).
2. George's Radio v. Capital Transit Co., 126 F.2d 219 (D.C. Cir. 1942); Shannon v. Mass. Bonding & Ins. Co., 62 F. Supp. 532 (D. C. La. 1945); Vandiver v. Pollak, 107 Ala. 547, 19 So. 180 (1895); Little v. Miles, 213 Ark. 725, 212 S.W.2d 935 (1948).
3. St. Lewis v. Morrison, 50 F. Supp. 570 (D. C. Ky. 1943); *In re* Lohr's Estate,

of equity.[4] It is well recognized that one joint tort-feasor cannot maintain an action for indemnity against another[5] but may, where a statute exists authorizing it, have contribution.[6]

It has been said that "conflict of laws problems have a beguiling tendency to be made even more complicated than they are . . . ."[7] This is evident when an accepted dichotomy of laws, the familiar procedural-substantive one,[8] must be considered. The line between substance and procedure is not only hazy,[9] it is movable[10] as well. Upon the court of the forum rests the burden of discovering this line.[11] Once this line is discovered the courts follow the rule that the substantive law of the *lex loci* is to be applied[12] with the procedural law of the forum.[13] While the difference between substance and procedure is incapable of exact definition,[14] suffice it to say that substance is that law from which the right of action arises[15] while procedure is that law which governs the enforcement of these rights.[16]

After extensively examining the law with respect to indemnity and contribution, the court, in the instant case, followed the legion of cases holding that there is no right to indemnity in joint tort-feasor situations.[17] When

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132 Pa. Super. 125, 200 Atl. 135 (1938); Wedel v. Klein, 229 Wis. 419, 282 N. W. 606 (1938); Farrelly, *Contribution and Indemnity Among Joint Tort-Feasors in Louisiana*, 5 LOYOLA L. REV. 151 (1949).

4. Shannon v. Mass. Bonding & Ins. Co., *supra* note 2; Ocean Accident & Guarantee Corp. v. U. S. Fidelity & Guarantee Co., 63 Ariz. 352, 162 P.2d 609 (1945); Brown v. Brown, 58 Ariz. 333, 119 P.2d 938 (1941); Jackson v. Lacy, 37 Cal. App.2d 685, 100 P.2d 313 (1940); Daniel v. Best, 532 Iowa 785, 5 N.W.2d 149 (1942).

5. Union Stock Yards Co. of Omaha v. Chicago, B. & Q. R.R., 196 U. S. 217 (1905); Am. Automobile Ins. Co. v. Mack, 34 F. Supp. 224 (D. C. Ky. 1940); City of Louisville v. Louisville Ry., 156 Ky. 141, 160 S. W. 771 (1913); Mass. Bonding & Ins. Co. v. Dingle-Clark Co., 142 Ohio St. 346, 353, 354, 52 N. E.2d 340, 343, 344 (1943); Northern Ohio Ry. v. Akron Canal & Hydraulic Co., 18 Ohio 51, *aff'd without opinion*, 75 Ohio St. 620, 80 N. E. 1130 (1906).

6. Cent. Surety & Ins. Corp. v. Miss. Export Ry., 91 F.2d 125 (5th Cir. 1937); Malkin v. Arundel Corp., 36 F. Supp. 948 (D. C. Mdo. 1941); Larson v. Cleveland Ry., 142 Ohio St. 20, 50 N. E.2d 163 (1943).

7. *See* Vanston Committee v. Green, 329 U. S. 156, 169 (1946) (opinion by Justice Frankfurter).

8. *See* Cohen v. Beneficial Industrial Loan Corp., 337 U. S. 541, 559 (1949) (opinion by Justice Rutledge).

9. *See* Sampson v. Chaneil, 110 F.2d 754, 756 (1st Cir. 1940), *cert. denied*, 310 U. S. 650, 652 (1940).

10. *See* Cook, *Characterization in the Conflicts of Laws*, 51 YALE L. J. 191 (1941); Cook, *Substance and Procedure in the Conflicts of Laws*, 42 YALE L. J., 333 (1932).

11. *See* note 10 *supra*.

12. *See* Anderson v. State Farm Mut. Automobile Ins. Co., 222 Minn. 428, 24 N.W.2d 836 (1946); note 10 *supra*; RESTATEMENT, CONFLICT OF LAWS § 584 (1939); *Characterization of Multi-State Libel in Conflict of Laws*, 48 COL. L. REV. 932 (1948).

13. *See* McClintock, *Distinguishing Substance and Procedure in Conflict of Laws*, 78 U. OF PA. L. REV. 933 (1930).

14. *In re* Paine's Estate, 128 Fla. 151, 174 So. 430 (1930).

15. *See* Dexter v. Edmands, 89 Fed. 467, 468 (C. C. Mass. 1898).

16. *See* Allen v. Bailey, 91 Colo. 260, 264, 14 P.2d 1087, 1091 (1932); Mix v. Board of Comm'rs of Nez Perce County, 18 Idaho 695, 700, 112 Pac. 215, 220 (1910); State v. McConnell, 156 Tenn. 523, 524, 3 S.W.2d 161, 162 (1928); Maurizi v. Western Coal and Mining Co., 321 Mo. 378, 381, 11 S.W.2d 268, 272 (1928).

17. *Ibid.* See also State v. Elmore, 179 La. 1057, 155 So. 896 (1934); State v. Rodosta, 173 Ld. 623, 625, 138 So. 124, 126 (1931).

faced with the contribution question where a Pennsylvania statute allows contribution to be enforced[18] and Ohio law denies it, the court had to make a choice of laws. Of necessity the court looked to the Ohio law[19] to discover whether it was substantive or procedural in this particular case. By using the rationale that there was an "implied engagement of each to bear the common burden" the court held the right of contribution to be "quasi-contractual". After finding that the contract law which gives rise to the right of contribution is substantive, the court applied it in conformity with conflict rules.[20]

With the law clear on the contribution aspect of this case the only arguable portion of the opinion is found in the court's holding the Ohio law to be substantive. It appears that the court considered contribution to be a right and since basic classification rules hold that the law of substance is that law which creates a right, it concluded that the Ohio law denying contribution was substantive. Contrary to this, the Pennsylvania statute procedurally allows enforcement of this equitable right. Would it not have been as correct to look to the Ohio law and discover that Ohio law does not allow enforcement of the equitable right of contribution? With this finding the court could then have held the Ohio law to be procedural and could have applied the Pennsylvania statute, thereby preventing this apparently inequitable result.

CRIMINAL LAW — CONVICTION FOR VAGRANCY UNDER CALIFORNIA STATUTE

The defendant was charged with two offenses defined in separate paragraphs of one vagrancy statute.[1] These offenses took place almost a month apart and he was given two sentences to run consecutively. *Held*, on appeal, only one sentence can be imposed for the commission of any or all of the offenses set out in the one statute. *People v. Allington*, 229 P. 2d 495 (Cal. App. 1951).

18. PA. STATS. tit. 12, § 2081 (1939); Kelly v. Pa. R.R., 7 F.R.D. 524 (D. C. Pa. 1948); Union Paving Co. v. Thomas, 9 F. R. D. 612 (D. C. Pa. 1950); Anstine v. Pa. R. R., 352 Pa. 43 A.2d 109 (1945).

19. See note 12 *supra*.

20. See notes 13 and 14 *supra*.

1. CAL. PEN. CODE § 647 (1949).

"1. Every person without visible means of living . . .; or
2. Every beggar who solicits alms as a business; or
3. Every person who roams from place to place without any lawful business; or
4. Every person known to be a pickpocket, thief, burglar, or confidence operator . . . having no visible means of support . . .; or
5. Every idle, or lewd, or dissolute person, or associate of known thieves; or
6. Every person who wanders about the streets at late or unusual hours of the night, without any visible or lawful business; or
7. Every person who lodges in any barn . . . or place other than such as is kept for lodging purposes, without the permission of the owner . . .; or